

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re: U.S. Application No. 09/852,906 filed May 9, 2001

Title: "Computer Graphics System And Computer-Implemented Method For Generating Coarse-Level Meshes For Multi-Resolution Service Editing"

Inventor: Silviu Borac

Attorney Reference: MENT-060

DECLARATION OF DAVID A. JACOBS

United States Patent and Trademark Office  
Commissioner for Patents  
Alexandria, VA 22314

I, David A. Jacobs, declare as follows:

1. I am a registered U.S. patent attorney (Reg. No. 31, 770) and a partner in the law firm of Gesmer Updegrafe LLP, 40 Broad Street, Boston, MA 02109.
2. I make this Declaration in support of the attached Petition to Revive Unavoidably Abandoned Application for Patent, serial number set forth above.
3. On June 9, 2005, I was contacted by telephone by Mr. Rolf Herken, President and Chief Executive Officer of Mental Images GmbH ("Mental Images"), assignee/owner of the above-listed U.S. patent application. At that time, my firm was handling corporate matters for Mental Images, but not patent matters.
4. During our June 9, 2005 telephone discussion, Mr. Herken indicated to me that he had recently become concerned about the status of his patent attorney, Mr. Richard Jordan, as well as the status of Mental Images' extensive patent portfolio, which was being handled by Mr. Jordan.
5. Mr. Herken also indicated that although he had worked with Mr. Jordan for approximately ten years, and was generally very pleased with Mr. Jordan's work, in the past few months, Mr. Jordan had not responded to telephone calls, emails or other inquiries, and Mr. Herken had not otherwise heard from Mr. Jordan for some months. This was even though, as Mr. Herken told me, he had traveled to Boston to meet with Mr. Jordan in early 2005, after Mr. Jordan had told Mr. Herken that his home office computer

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had suffered a breakdown. Mr. Herken also told me that at the time of the early 2005 meeting, he had requested a status chart, which Mr. Jordan promised to send.

6. Since by the time of our initial June 9, 2005 telephone discussion he had received no status chart, or other communications from Mr. Jordan for some time, Mr. Herken indicated that he was becoming concerned.

7. As a result of that discussion, I suggested (1) further attempts to contact Mr. Jordan and (2) status checks of all of Mental Images's pending U.S. patent applications. (On knowledge and belief, Mr. Jordan was Mental Images' sole U.S. patent counsel.)

8. The first task in undertaking status checks was for a complete internal review of Mental Images's patent portfolio, which, Mr. Herken told me, included dozens of U.S. and foreign patent applications and patents. Communications ensued between my office (in this regard, principally myself and my patent paralegal) and Mr. Herken and his colleagues in Germany to effect such a review.

9. At the outset of these communications, Mental Images did not have immediately available a reliably complete list of such filings (a list they told me they had previously requested from Mr. Jordan, and which was, in fact, the status chart he had promised to send), and particularly, a reliably complete list of pending U.S. patent applications.

10. Once such a list was developed, my patent paralegal and I generated Powers to Inspect for use by our local searcher in Arlington, VA.

11. The Powers were sent to Germany for signature and returned, and inspections began.

12. As a result of those inspections, I first became aware of the abandoned status of the above-referenced application (which proved to be one of twelve abandoned patent applications being handled by Mr. Jordan) on July 12, 2005, upon review of a copy of file history documents forwarded to my office from our local searcher in Arlington, VA.

13. As shown in the Table of Contents of the prosecution file wrapper (copy attached hereto as Exhibit A), a Notice to File Missing Parts (Exhibit B attached hereto) had been mailed to Mr. Jordan on July 11, 2001, and a Notice of Abandonment (Exhibit C attached hereto) had been mailed to Mr. Jordan on October 23, 2003.

14. I immediately emailed Rolf Herken to advise him of the abandon of this and other applications and indicated that we should prepare Petitions to Revive.

15. Rolf Herken advised me by return email that he had asked his cousin Dr. Ulrich Herken, M.D., who is based in the Boston area, to visit the Boston-area home office of Mr. Jordan to check on his health and well-being, as well as to attempt to inquire about the status of various intellectual property projects. Mr. Herken also advised me that Dr. Herken had indeed spoken with Mr. Jordan during that visit, which occurred on June 23, 2005, and that Dr. Herken left that discussion concerned about Mr. Jordan's mental state and his ability to handle Mental Images' patent portfolio.

16. Prior to that time, I had no information or reason to believe that any cases had gone abandoned.

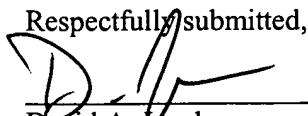
17. Upon learning of the abandonment status and conferring with our client Mental Images, I expeditiously undertook the follow-up investigations, review, telephone and email discussions and document iterations with Mental Images (principally with Rolf Herken, based in Berlin, Germany) that were necessary to prepare and file the attached Petition.

18. During that process, I also prepared, in consultation with Rolf Herken, a Letter (copy attached hereto as Exhibit D) from Mr. Herken to the USPTO, which was filed on July 25, 2005, soliciting input from the USPTO on an appropriate way to proceed, which input was provided.

I HEREBY DECLARE that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

Date: 8/1, 2005

Respectfully submitted,

  
\_\_\_\_\_  
David A. Jacobs  
Reg. No. 31,770  
GESMER UPDEGROVE LLP  
Boston, MA 02109  
Tel.: (617) 350-6800  
Fax: (617) 350-6878

## PATENT APPLICATION

J1036 U.S. PTO

09/852906

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05/09/01

## EXHIBIT A

INITIALS *MM 30 0125*

## CONTENTS

Date Received  
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Date Received  
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|--------------------------|----------|--|
| 1. Application           | papers.  |  |
| 2. H. Reclaim, Fee       | 6/11/01  |  |
| 3. ADDS                  | 05-01-03 |  |
| 4. CR OF ADD             | 11-23-03 |  |
| 5. POWER TO INSPECT/COPY | 6.29.05  |  |
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## UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS  
 UNITED STATES PATENT AND TRADEMARK OFFICE  
 WASHINGTON, D.C. 20231  
[www.uspto.gov](http://www.uspto.gov)

APPLICATION NUMBER	FILING/RECEIPT DATE	FIRST NAMED APPLICANT	ATTORNEY DOCKET NUMBER
09/852,906	05/09/2001	Silviu Borac	MENT-060

CONFIRMATION NO. 4769

## FORMALITIES LETTER



\*OC00000006282413\*

Richard A. Jordan  
 P.O. Box 81363  
 Wellesley Hills, MA 02481-0004

Date Mailed: 07/11/2001

## NOTICE TO FILE MISSING PARTS OF NONPROVISIONAL APPLICATION

FILED UNDER 37 CFR 1.53(b)

*Filing Date Granted*

An application number and filing date have been accorded to this application. The item(s) indicated below, however, are missing. Applicant is given TWO MONTHS from the date of this Notice within which to file all required items and pay any fees required below to avoid abandonment. Extensions of time may be obtained by filing a petition accompanied by the extension fee under the provisions of 37 CFR 1.136(a).

- The statutory basic filing fee is missing.  
*Applicant must submit \$ 710 to complete the basic filing fee and/or file a small entity statement claiming such status (37 CFR 1.27).*
- Total additional claim fee(s) for this application is \$774.  
 ■ \$774 for 43 total claims over 20.
- The oath or declaration is missing.  
*A properly signed oath or declaration in compliance with 37 CFR 1.63, identifying the application by the above Application Number and Filing Date, is required.*
- To avoid abandonment, a late filing fee or oath or declaration surcharge as set forth in 37 CFR 1.16(e) of \$130 for a non-small entity, must be submitted with the missing items identified in this letter.
- The balance due by applicant is \$ 1614.

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*A copy of this notice MUST be returned with the reply.*

*[Signature]*  
 Customer Service Center  
 Initial Patent Examination Division (703) 308-1202  
 PART 3 - OFFICE COPY

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**EXHIBIT C**Page 1 of 1  
4**UNITED STATES PATENT AND TRADEMARK OFFICE**

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
[www.uspto.gov](http://www.uspto.gov)

APPLICATION NUMBER	FILING OR 371(C) DATE	FIRST NAMED APPLICANT	ATTY. DOCKET NO./TITLE
09/852,906	05/09/2001	Silviu Borac	MENT-060

**CONFIRMATION NO. 4769****ABANDONMENT/TERMINATION  
LETTER**

\*OC000000011090201\*

Date Mailed: 10/23/2003

**NOTICE OF ABANDONMENT UNDER 37 CFR 1.53 (f) OR (g)**

The above-identified application is abandoned for failure to timely or properly reply to the Notice to File Missing Parts (Notice) mailed on 07/11/2001.

- No reply was received.

A petition to the Commissioner under 37 CFR 1.137 may be filed requesting that the application be revived.

Under 37 CFR 1.137(a), a petition requesting the application be revived on the grounds of **UNAVOIDABLE DELAY** must be filed promptly after the applicant becomes aware of the abandonment and such petition must be accompanied by: (1) an adequate showing of the cause of unavoidable delay; (2) the required reply to the above-identified Notice; (3) the petition fee set forth in 37 CFR 1.17(l); and (4) a terminal disclaimer if required by 37 CFR 1.137(d).

Under 37 CFR 1.137(b), a petition requesting the application be revived on the grounds of **UNINTENTIONAL DELAY** must be filed promptly after applicant becomes aware of the abandonment and such petition must be accompanied by: (1) a statement that the entire delay was unintentional; (2) the required reply to the above-identified Notice; (3) the petition fee set forth in 37 CFR 1.17(m); and (4) a terminal disclaimer if required by 37 CFR 1.137(d).

Any questions concerning petitions to revive should be directed to the "Office of Petitions" at (703) 305-9282. Petitions should be mailed to: Mail Stop Petitions, Commissioner for Patents, P.O. Box 1450, Alexandria-VA 22313-1450.

*A copy of this notice MUST be returned with the reply.*

  
Customer Service Center

Initial Patent Examination Division (703) 308-1202

PART 3 - OFFICE COPY

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## EXHIBIT D

## IN THE UNITED STATES PATENT AND TRADEMARK OFFICE



In re: U.S. Application No. 09/852,906 filed May 9, 2001

Attorney Reference: MENT-060

"Computer Graphics System And Computer-Implemented Method For Generating Coarse-Level Meshes For Multi-Resolution Service Editing"

LETTERHAND DELIVERY

United States Patent and Trademark Office  
Assistant Commissioner for Patents  
Alexandria, VA 22314

Dear Sir or Madam:

I am Rolf Herken, President and Chief Executive Officer of Mental Images GmbH, assignee/owner of the above-listed U.S. patent application, and a named applicant/inventor in many of the applications I will discuss in this letter.

I am writing regarding an issue that my company and I have discovered in the past few days, namely, that the above-listed patent application and 11 others, among the many patent and trademark applications that our outside patent attorney Richard Jordan, Esq. (U.S. Reg. No. 27,807)

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

In re: U.S. Application No. 09/852,906 filed May 9, 2001

Attorney Reference: MENT-060

"Computer Graphics System And Computer-Implemented Method For Generating Coarse-Level Meshes For Multi-Resolution Service Editing"

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**LETTER**

**HAND DELIVERY**

United States Patent and Trademark Office  
Assistant Commissioner for Patents  
Alexandria, VA 22314

Dear Sir or Madam:

I am Rolf Herken, President and Chief Executive Officer of Mental Images GmbH, assignee/owner of the above-listed U.S. patent application, and a named applicant/inventor in many of the applications I will discuss in this letter.

I am writing regarding an issue that my company and I have discovered in the past few days, namely, that the above-listed patent application and 11 others, among the many patent and trademark applications that our outside patent attorney Richard Jordan, Esq. (U.S. Reg. No. 27,807)

prosecuted for us before the USPTO, have gone abandoned; even though Mr. Jordan continued to assure us that our patent portfolio, including these applications, was being properly handled by him. It was never our intention to abandon these applications, which are central to the continued success of our company; and we were never advised that they had gone abandoned; and in fact, Mr. Jordan's advice to us was quite the contrary. Accordingly, while my company's new patent counsel is drafting Petitions to Revive under 37 C.F.R. 1.137(a) or (b), I am writing to respectfully request any insight or advice you might be able to provide.

Mental Images GmbH, based in Berlin, Germany, which I founded in 1986, is in the business of developing and selling computer graphics software. Our software, which includes high-performance methods for rendering images for motion pictures, video games, and other applications, is (or has been) licensed to DreamWorks Animation SKG, Inc., Industrial Light & Magic (a division of Lucas Digital Ltd.), Electronic Arts, Inc. and other prominent motion picture, visual effects and video game companies; to the world's leading design and content creation software companies including Microsoft Corp., Alias Systems, AutoDesk, Inc., Avid Technology, Inc., Dassault Systemes SA, and SolidWorks Corp., and other industry users. Our company employs 56 people, eight of them in the U.S., and we have a subsidiary in San Francisco, CA. In March 2003, the American Academy of Motion Picture Arts and Sciences honored the developers of our Mental Ray rendering software product with an Academy Award for technical achievement, making the award to 'Thomas Driemeyer and to the mathematicians, physicists and software engineers of Mental Images for their contributions to the Mental Ray rendering software for motion pictures.'

Over the last ten years, our company has spent approximately \$1 million U.S. for the preparation and prosecution of U.S. patent applications and patents, the vast majority of that (i.e., nearly \$100,000/year) in legal fees to Mr. Jordan. For example, during the period January 2003 to April 2005, Mr. Jordan sent us 43 invoices for patent matters, in the amount of approximately \$170,000. (These figures do not include amounts spent by our company for PCT, EP and other national patent applications, or for the equally substantial trademark work undertaken for our company by Mr. Jordan.) The corresponding U.S. patent files occupy approximately 3 meters of shelf space in our company's Berlin offices.

We first began working with Mr. Jordan in 1994, and for an entire decade have had an excellent working relationship with him. Mr. Jordan successfully obtained numerous U.S. patents for us, covering our core technology and products, a number of which we currently license out to

other companies, and all of which have been a key to our raising investment capital. Mr. Jordan has been responsible for the preparation and prosecution of dozens of U.S. patent applications, including those listed above.

Over that approximately ten-year period, I have had frequent and extensive telephone discussions, a fair number of in-person meetings, and an exchange of more than 1000 emails, faxes and other correspondence with Mr. Jordan regarding our company's patent portfolio. In 2002, we had at least 11 telephone conferences; in 2003, at least four telephone conferences; and in 2004 there were at least five telephone conferences.

But from the beginning of May 2005, when Mr. Jordan was to have returned from vacation, Mr. Jordan had essentially "disappeared", and would no longer answer my telephone calls, emails, faxes or other communications. What Mr. Jordan never told us, and what we have now just learned through the work of another patent attorney, is that the above-referenced U.S. patent applications went abandoned, one by one, over the course of years 2001-2005. Perhaps even more baffling, up until his "disappearance", Mr. Jordan acted in a manner that assured us that he was in control of the patent portfolio, even inquiring as to new developments that might warrant the filing of continuation-in-part applications based on (what we now know to be) abandoned patent applications; and filing Information Disclosure Statements in cases where he had (unbeknownst to us) failed to respond to Notices of Missing Parts.

At no time prior to just a few days ago did we know that the applications were abandoned, and in fact, Mr. Jordan on several occasions, upon my inquiry, indicated to us that he was in good control of our U.S. patent portfolio.

For example, in March 2003 we licensed our software to DreamWorks, whose counsel checked on the status of our patent applications during several telephone discussions with Mr. Jordan in December 2002. The software license was successfully entered into shortly thereafter and is still in force.

In mid-2003, the company raised approximately \$6 million in investment money from outside investors. This process included a due diligence review of the patent portfolio by the investors' counsel, which at that time indicated no problems with status. Due diligence, and a review of the relevant patent portfolio, was also conducted by the American Academy of Motion Picture Arts and Sciences prior to their awarding of the 2003 Academy Award for technical achievement to our company.

On 7 May 2003, Mr. Jordan wrote to our European patent attorney regarding our MENT-059PCT application (Application No. PCT/IB01/00922). We decided at that time that while enormous progress had been made in converting the invention described in the MENT-059 (U.S. Serial No. 09/844511) application into a commercial product, the original application covered our invention and we did not see the need to file a divisional application at that time.

In January 2004, Mr. Jordan sent email and called me to discuss various patent matters, and as a result of that call I advised co-inventor Thomas Driemeyer that Mr. Jordan had inquired as to any new innovations or improvements to the subject matter of the MENT-059 patent application that might warrant the filing of a continuation-in-part application.

Yet despite all this activity, and unbeknownst to us, the MENT-059 application went abandoned in December 2001 for failure to respond to a Notice of Missing Parts that was mailed in June 2001.

In March 2004 we discussed with Mr. Jordan an EPO search report and whether it might be prior art to one of the above-referenced U.S. patent applications.

In May 2004 we discussed with Mr. Jordan comments by the inventor on our case MENT-066 (U.S. Application 10/439,311) regarding a possible extension of the application (which, unbeknownst to us, went abandoned in January 2004). But in a telephone meeting on November 11, 2004 Mr. Jordan discussed with me in detail an Office Action by the European Patent Office regarding the very same MENT-066 application.

Accordingly, at no time until the end of 2004 did I have any information to suggest that there was any problem with the prosecution or status of our U.S. patent applications. In fact, Mr. Jordan on numerous occasions gave every indication of being fully in charge of our U.S. patent applications.

In December 2004, however, Mr. Jordan advised us that his computer system had suffered a breakdown, causing the loss of patent docket and other critical data. In response to that, and being concerned about the disruption that might cause, on 19 January 2005 I traveled to Boston for a meeting with Mr. Jordan regarding the company's patent portfolio. I told Mr. Jordan that my company would help him obtain IT assistance for his computer problems, and that we would get him any other assistance that he needed, but that we would need solid information about the status of our applications and any upcoming deadlines, including a status chart. Mr. Jordan indicated that he would need a bit of time to put that together, but promised to send a status chart by the end of March 2005. Mr. Jordan said he would provide a complete status check through the end of March,

and that he would also seek to recreate his docket (at that point, over two dozen of what we thought were active U.S. patent applications) from the paper files in his home office.

As a result of that January 2005 meeting I arranged for one of our IT specialists to contact Mr. Jordan by telephone to discuss the matter with him and eventually to visit Mr. Jordan's home office to help him with his computer problems. I also spoke to Mr. Jordan by telephone during my stay in Boston (which was prolonged unexpectedly due to a severe snow storm). Mr. Jordan then decided to solve the problem with the help of local technical support. On 24 January 2005 we also sent to Mr. Jordan, at his request, copies of our entire email correspondence with him for the period November 2004 to January 2005.

On 16 March 2005 I called Mr. Jordan and spoke with him to check on the status of the various U.S. patent applications. I explicitly asked about the status of the MENT-059 application. He replied that this was still pending and that he had not received an office action. It was left that Mr. Jordan would get back to us with status information. However, I did not receive the noted status chart from Mr. Jordan at the end of March, or thereafter.

Thereafter, we continued to attempt to reach Mr. Jordan by email, fax, and telephone, without success. We even tried the Munich telephone numbers we had been given by him on earlier occasions. Our messages were not returned.

On 26 April 2005 our "Russian Roulette" patent (No. 6,885,370) issued. We had received from Mr. Jordan a copy of the official Issue Notice relating to this case, but since Mr. Jordan never sent us a copy of the issued patent or various earlier notices (e.g., the Notice of Allowance) – and because this was the first patent that issued "early" or out of the order in which we had submitted the applications -- we began to become concerned about Mr. Jordan's handling of our other U.S. patent applications.

However, in March and April 2005, Mr. Jordan filed some trademark applications on behalf of the company and sent us his invoices in early April. He also told me in a telephone conference on 16 March 2005 that he would be traveling to Munich on vacation until the beginning of May, and that while there, he would either observe or participate in the oral argument of one of our corresponding European patent applications (MENT-020PCT) before the European Patent Office on 18 April 2005.

Thus, the situation was not entirely clear. Mr. Jordan on the one hand appeared to be proactively handling certain matters, but as to other matters there was ominous silence, and a complete failure to return messages.

On 9 June 2005, concerned about the complete lack of any word from Mr. Jordan, we spoke with our corporate counsel, Peter Moldave, Esq. of Gesmer Updegrafe, as to whether he knew of anyone who could assist us regarding the patent matters. Mr. Moldave brought in David Jacobs, Esq., a patent attorney and partner of the Gesmer Updegrafe firm, who advised that we run a direct check of USPTO records and obtain copies of prosecution histories. Given that there had been absolutely no contact from Mr. Jordan for two months, I also asked Mr. Jacobs what we could do to check on Mr. Jordan's health and well-being.

While Mr. Jacobs was conducting a check and obtaining copies of file histories from the USPTO, Mr. Jacobs also attempted to contact Mr. Jordan by telephone (at least one voicemail message was left on Mr. Jordan's answering machine), fax and email. None of the messages was returned.

Also during this process, I asked my cousin, Ulrich Herken, M.D., PhD, who is based in Boston, Massachusetts, to visit Mr. Jordan's home office in Wellesley, Massachusetts, to see if he could contact Mr. Jordan. I briefed my cousin with regard to our concern about Mr. Jordan's failure to contact us or return messages since his presumptive return from vacation at the beginning of May.

As my cousin Dr. Herken described it to me in a detailed email on 23 June 2005, and in further detail in a telephone call the next day, Dr. Herken arrived at Mr. Jordan's house at approximately 5:00 pm on 23 June 2005 and rang the doorbell, but did not immediately receive a response. Dr. Herken went to speak with Mr. Jordan's neighbor, who assured him that Mr. Jordan still lived there and was actually at home. A few minutes later, as Dr. Herken was about to leave, the door to Mr. Jordan's home opened, and someone stepped out to retrieve the newspaper and mail. Dr. Herken approached, identified himself as my cousin and handed over his business card, and asked if the individual was Mr. Jordan. The individual, dressed in pajamas, unshaven and initially confused, indicated that he was. When asked why he had not returned messages or otherwise been in communication for almost three months, Mr. Jordan indicated that he had been suffering from a reaction to some medication, but was now feeling better. He indicated that he greatly enjoyed working on the Mental Images patent applications and would soon be sending more work-product.

As the conversation proceeded, however, Dr. Herken began to sense that the individual was not in command of his faculties. Mr. Jordan spoke of things he had accomplished for Mental Images. He also said that he would send the missing information I had been promised (i.e., the status chart) on the same day by fax, but nothing arrived on that day or ever since. And he seemed

to be confused as to time and day: he spoke of cases, deadlines and other requirements that were relevant months or even years ago, as if they were upcoming deadlines.

My cousin left that meeting convinced that Mr. Jordan was no longer competent to handle my company's patent work.

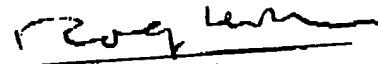
On 12 July 2005, based on our new patent counsel's inspection of the USPTO's patent records, I was advised that the above-referenced applications had gone abandoned, almost all of them for failure to file a response to Missing Parts (fees and declarations). We have never received a Notice of Abandonment or any other information suggesting that the cases were abandoned.

To the contrary, in our correspondence and other contacts, Mr. Jordan gave us the impression of being in control of the patent portfolio.

Our new patent counsel, Gesmer Updegrafe LLP, has begun drafting Petitions to revive the referenced patent applications. However, I would greatly appreciate any guidance, advice or insight you can provide with regard to reviving the applications.

Respectfully submitted,

Mental Images GmbH



By: Rolf Herken  
President and Chief Executive Officer

Address: Fasanenstrasse 81  
10623 Berlin  
Germany  
Phone: ++49-30-315 9970  
Fax: ++49-30-315 997 33  
Email: [rolf@mentalimages.com](mailto:rolf@mentalimages.com)

cc: Gesmer Updegrafe LLP  
David A. Jacobs, Esq.  
40 Broad Street  
Boston, MA 02109

REST AVAILABLE COPY

Number Mü 89 of the Roll of Deeds for 2005

I do hereby certify that the signature signed before me on page 7 is the true  
signature of

1. Mr. Rolf Herken, with business address at Fasanenstrasse 81, 10623 Berlin,  
Germany.

Mr. Rolf Herken is personally known to me.

Berlin, July 19, 2005

L.S.

Hanns-William Mülsch,  
Notary in Berlin, Germany



W

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